In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 948

CYRUS HIGGINSON, ON BEHALF OF HIMSELF AND ALL OTHER FORMER LANDOWNERS, OR HEIRS, SUCCESSORS AND ASSIGNS THEREOF, OF 36,000 ACRES, NAMELY CAMP BRECKINRIDGE, IN UNION, HENDERSON, AND WEBSTER COUNTIES, KENTUCKY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner brought this suit as a class action on behalf of himself and all others whose lands had been condemned during World War II for use as part of Camp Breckinridge, Kentucky. In the condemnation actions, the complaints and declarations of taking provided that "the estate taken for said public uses is the full fee simple title thereto, subject, however, to existing easement for public utilities, for railroads and pipelines" (Pet. App. ii).[1] Camp Breckinridge

[1] In a few instances, the United States acquired these lands subject to outstanding oil and gas leases, but those interests were later condemned.

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was placed on an inactive status in 1953 and so remained at the time this action was initiated (Pet. App. ii).[2]

Petitioner's complaint sought recovery for the rental value of the property subsequent to 1953 on the ground that under Kentucky law the title which the United States acquired in the condemnation proceedings was subject to reversionary rights in the former owners when the property ceased to be used for military purposes. The district court granted the Government's motion to dismiss the complaint for failure to state a claim upon which relief can be granted (Pet. App. B). The court of appeals affirmed, holding that the nature of title taken under the federal power of eminent domain is determined by federal law, rather than the law of the state where the lands are located (384 F. 2d 504, Pet. App. A).[3]

The decision of the court below is correct and is not in conflict with the decisions of any other courts of appeals. There is no occasion for further review by this Court.

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[2] The lands were ultimately declared surplus to the needs of the Government and were sold, subsequently to the bringing of this action, for a price greatly in excess of their acquisition costs.

[3] Petitioner's complaint also sought an order directing the Government to resell the lands to their former owners pursuant to Section 23(d) of the Surplus Property Act of 1944, 58 Stat. 777, 50 U.S.C. App. (1946 ed.) 1632. The court below held that petitioner's rights under Section 23(d) were extinguished by its repeal by Section 502 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 399. Petitioner does not contest that ruling in this Court.

In the declarations of taking the United States clearly specified its intention to take "full fee simple title" to the lands, with no reversion to the former owners. The nature of the title acquired under these circumstances is controlled by federal law, *United States* v. *93.970 Acres,* 360 U.S. 328, 332–333; *United States* v. *Miller,* 317 U.S. 369, 379–380; *Kohl* v. *United States,* 91 U.S. 367, 374, and petitioner does not contend that the alleged reversionary interest is founded upon federal law.

None of the cases relied on by petitioner are in conflict with the decision of the court below. Four of the five cases cited merely hold that state law determines the nature of the interest which the condemnee owns in the condemned property. *United States* v. *Certain Property in the Borough of Manhattan,* 306 F. 2d 439 (C.A. 2); *Carmichall* v. *United States,* 273 F. 2d 392 (C.A. 5); *United States* v. *19.86 Acres in East St. Louis,* 141 F. 2d 344 (C.A. 7); *United States* v. *Becktold Co.,* 129 F. 2d 473 (C.A. 8). In these cases, the question was whether certain properties were fixtures which were condemned as part of the real property or were personal property excluded from the taking. None of them holds that the nature of the title described in the condemnation proceeding as acquired by the United States is determined with reference to local law.

The fifth case relied on by petitioner arose from a conveyance of land to the United States by deed and the reservation by the grantor of a mineral servitude which was peculiar to Louisiana law. *Leiter Minerals, Inc.* v. *United States,* 329 F. 2d 85 (C.A. 5). The

decision of the Fifth Circuit was subsequently vacated by this Court with directions to dismiss the cause as moot. *United States* v. *Leiter Minerals, Inc.*, 381 U.S. 413. This dismissal for mootness prevented that case "from spawning any legal consequences." *United States* v. *Munsingwear*, 340 U.S. 36, 41.

Contrary to petitioner's assertion, the circuits are in agreement on the proposition that federal law controls federal condemnation proceedings, including the nature of the estate acquired therein. See, *e.g.*, *United States* v. *Certain Property in the Borough of Manhattan*, 344 F. 2d 142, 144 (C.A. 2); *United States* v. *Pinson*, 331 F. 2d 759, 760 (C.A. 5); *Bumpus* v. *United States*, 325 F. 2d 264, 266 (C.A. 10); *United States* v. *Sixteen Parcels* (*St. Louis, Missouri*), 281 F. 2d 271, 274 (C.A. 8); *United States* v. *Certain Interests in Property* (*Champaign County, Ill.*), 271 F. 2d 379, 384 (C.A. 7); *United States* v. *State of South Dakota*, 212 F. 2d 14 (C.A. 8).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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